

## **REMARKS**

### **Amendments**

#### ***Amendments to the Claims***

Applicant has amended the independent claims to incorporate subject matter from various dependent claims and to claim encoding a frame of audio data. No new matter has been added as a result of these amendments as the encoding is disclosed, *intra alia*, in paragraphs 22-24 of the Specification.

### **Rejections**

#### ***Rejections under 35 U.S.C. § 101***

#### **Claims 1-25**

Claims 1-25 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter because they do not recite a practical application. Claims 2, 15 and 19 have been cancelled.

The invention as claimed in the amended claims produces encoded audio data. Applicant respectfully submits that producing encoded audio data is a useful, concrete and tangible result and thus the claims do recite a practical application.

Accordingly, Applicant respectfully submits that the invention as claimed in claims 1, 3-14, 16-18 and 20-25 is statutory subject matter and respectfully request the withdrawal of the rejection of the claims under 35 U.S.C. § 101.

#### ***Rejections under 35 U.S.C. § 102(e)***

#### **Claims 1, 2, 6, 8, 9, 12-14, 15, 18, 19, 22, 23 and 25**

Claims 1, 2, 6, 8, 9, 12-14, 15, 18, 19, 22, 23 and 25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lopez-Estrada, et al. U.S. Publication 2003/0083867 (previously cited).

Applicant has amended the claims to specify that initial common scale factor is set to a prior common scale factor if a maximum spectral coefficient is not equal to zero, which is part of the subject matter originally claimed in claims 2, 3, 15, 16, 19 and 20.

Applicant respectfully submits that Lopez-Estrada does not teach or suggest this claim limitation.

Accordingly, Applicant respectfully submits that the invention claimed in claims 1, 6, 8, 9, 12-14, 18, 22, 23 and 25 is not anticipated by Lopez-Estrada under 35 U.S.C. § 102(e) and respectfully requests the withdrawal of the rejection of the claims.

**Allowable Subject Matter**

Applicant thanks the Examiner for indicating that claims 3-5, 7, 10, 11, 16, 17, 20, 21 and 24 contain allowable subject matter if rewritten in independent form. Applicant has amended the independent claims with part of the subject matter originally claimed in claims 3, 16 and 20, and has cancelled that subject matter from claims 3, 16 and 20.

**SUMMARY**

Claims 1, 3-14, 16-18 and 20-25 are currently pending. In view of the foregoing amendments and remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Sue Holloway at (408) 720-8300 x3476.


**Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR  
& ZAFMAN LLP

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